

1 KEVIN V. RYAN (CSBN 118321)
2 United States Attorney

ORIGINAL
FILED
DEC 14 AM 9:16
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11
12 UNITED STATES OF AMERICA,

13 Plaintiff,

14
15 v.

16
17 MIN T. MA,

18 Defendant.

CR No. 04 0504

JSW

VIOLATION: Insider Trading –
15 U.S.C. § 78j(b), 15 U.S.C. § 78ff(a),
17 CFR § 240.10b-5

SAN FRANCISCO VENUE

19
20 INFORMATION

21 The United States Attorney charges:

22 I. BACKGROUND

23 At all times relevant to this Information:

24 1. The defendant, MIN T. MA, was a resident of the city and county of San
25 Francisco, California. From between on or about September 2000 through on or about
26 March 2004, MA was an employee of Bowne Business Solutions (“Bowne”), a Chicago,
27 Illinois based company that provided desktop publishing services to various companies,
28 including the Palo Alto and Menlo Park, California offices of Merrill Lynch, Pierce,

INFORMATION

1 Fenner & Smith, Incorporated ("Merrill Lynch").

2 2. Applied Molecular Evolution, Inc. ("Applied Molecular") was a medical
3 biotechnology company incorporated in Delaware and headquartered in San Diego,
4 California. Applied Molecular's common stock was publicly traded under the symbol
5 "AMEV" on the nationwide automated quotation system ("NASDAQ") operated by the
6 National Association of Securities Dealers.

7 3. SangStat Medical Corporation ("SangStat") was a biotechnology company
8 located in Fremont, California. SangStat's common stock was publicly traded under the
9 symbol "SANG" on the nationwide automated quotation system ("NASDAQ") operated
10 by the National Association of Securities Dealers.

11 II. RELEVANT LEGAL AND ECONOMIC PRINCIPLES

12 4. The federal securities laws are intended to ensure honest markets and to
13 promote investor confidence. Investors have a legitimate expectation that the prices of
14 actively traded securities reflect publicly available information about the companies that
15 issue those securities.

16 5. Insider trading undermines investor confidence in the integrity of the
17 securities markets. Insider trading under the "misappropriation theory" occurs when
18 corporate outsiders misappropriate material, nonpublic information of that corporation,
19 for securities trading purposes, in breach of a duty owed to the source of the information.

20 6. Securities Exchange Act Rule 10b-5 prohibits insider trading under the
21 "misappropriation theory."

22 III. BOWNE'S POLICY

23 7. On or about May 11, 2001, MA signed a Merrill Lynch Site Employee
24 Agreement ("Site Agreement") which set forth, among other things, explicit restrictions
25 on the use of information MA obtained while performing on-site desktop publishing
26 services at Merrill Lynch. MA was required to sign the agreement before engaging in any
27 desktop publishing work on behalf of Bowne for Merrill Lynch.

28 8. The Site Agreement prohibited MA from acting upon material, confidential

1 information he obtained during the performance of his service (1) by directly or indirectly
2 purchasing or selling securities of any corporation or entity (whether or not a client of
3 Merrill Lynch) through an account or entity over which he had control, or through which
4 he had a direct or indirect interest, or (2) by recommending or suggesting such a purchase
5 or sale to another person. In addition, the Site Agreement specifically informed the
6 defendant that any such conduct violated the securities laws and, further, that those laws
7 prohibited disclosure of material, nonpublic information to others.

8 IV. MA'S POSSESSION AND USE OF MATERIAL, NONPUBLIC INFORMATION

9 9. Between on or about December 15, 2000 and August 27, 2003, MA
10 performed desktop publishing work at Merrill Lynch which involved SangStat Medical
11 Corporation. Included in the information MA reviewed was material, confidential,
12 nonpublic information that SangStat was the potential target of a merger with another
13 publicly-traded corporation.

14 10. Between on or about June 25, 2003 and November 26, 2003, MA
15 performed desktop publishing work at Merrill Lynch that involved information about
16 Applied Molecular. Included in the information MA reviewed was material, confidential,
17 nonpublic information that Applied Molecular was the potential target of a merger with
18 another publicly-traded corporation.

19 V. MA'S INSIDER TRADING

20 11. Between on or about June 9, 2003 and July 17, 2003, MA, acting on the
21 basis of misappropriated material, confidential, nonpublic information, purchased and
22 caused to be purchased for his benefit 8,800 shares of SangStat stock at an average price
23 of \$13.42 per share, for a total of \$118,116.56. Between on or about August 4, 2003 and
24 August 5, 2003, MA sold 8,800 shares of SangStat stock at an average price of \$22.30 per
25 share, obtaining gross proceeds of \$196,240. The net proceeds from these transactions
26 totaled \$78,123.44.

27 12. Between on or about August 25, 2003 and August 26, 2003, MA, acting on
28 the basis of misappropriated material, confidential, nonpublic information, purchased and

1 caused to be purchased for his benefit 10,730 shares of Applied Molecular stock at an
2 average price of \$6.64 per share, for a total of \$71,215.02. On December 9, 2003, MA
3 sold 10,730 shares of Applied Molecular stock at an average price of \$17.74 per share,
4 obtaining gross proceeds of \$190,350.20. The net proceeds from these transactions total
5 \$119,135.18.

6
7 COUNT ONE: (15 U.S.C. § 78j(b), 15 U.S.C. § 78ff(a), and 17 CFR 240.10b-5 – Insider
8 Trading)

9 13. Paragraphs 1 through 12 are realleged as if fully set forth in this Count.

10 14. Between on or about June 9, 2003 and July 17, 2003, both dates being
11 approximate and inclusive, in the Northern District of California, and elsewhere, the
12 defendant,

13 MIN T. MA,

14 did willfully, directly and indirectly, by the use of means and instrumentalities of
15 interstate commerce and of the facilities of a national securities exchange, use and employ
16 manipulative devices and contrivances in connection with the purchase and sale of
17 securities registered on a national securities exchange, namely, the common stock of
18 SangStat, in contravention of the rules and regulations prescribed by the Securities and
19 Exchange Commission, specifically 17 CFR 240.10b-5, in that he: (a) employed devices,
20 schemes, and artifices to defraud; and (b) engaged in acts, practices, and courses of
21 business that operated as a fraud and deceit.

22 15. Specifically, between on or about June 9, 2003 and July 17, 2003, on the
23 basis of material, nonpublic information regarding a potential merger of SangStat with
24 another publicly-traded corporation, MA purchased 8,800 shares of SangStat stock, for
25 his own benefit and having misappropriated such material, nonpublic information in
26 breach of his duties of confidentiality, trust, and loyalty to Merrill Lynch.

27 All in violation of Title 15, United States Code, Sections 78j(b) and 78ff(a), and
28 Title 17, Code of Federal Regulations, Section 240.10b-5.

1 COUNT TWO: (15 U.S.C. § 78j(b), 15 U.S.C. § 78ff(a), and 17 CFR 240.10b-5 – Insider
2 Trading)

3 16. Paragraphs 1 through 12 are realleged as if fully set forth in this Count.

4 17. On or about August 25, 2003 and August 26, 2003, in the Northern District
5 of California, the defendant,

6 MIN T. MA,

7 did willfully, directly and indirectly, by the use of means and instrumentalities of
8 interstate commerce and of the facilities of a national securities exchange, use and employ
9 manipulative devices and contrivances in connection with the purchase and sale of
10 securities, namely, the common stock of Applied Molecular, in contravention of the rules
11 and regulations prescribed by the Securities and Exchange Commission, specifically 17
12 CFR 240.10b-5, in that he: (a) employed devices, schemes, and artifices to defraud; and
13 (b) engaged in acts, practices, and courses of business that operated as a fraud and deceit.

14 18. Specifically, between on or about August 25, 2003 and August 26, 2003, on
15 the basis of material, nonpublic information regarding a potential merger of Applied
16 Molecular with another publicly-traded corporation, MA purchased 10,730 shares of
17 Applied Molecular stock, for his own benefit and having misappropriated such material,
18 nonpublic information in breach of his duties of confidentiality, trust, and loyalty to
19 Merrill Lynch.

20 All in violation of Title 15, United States Code, Sections 78j(b) and 78ff(a), and
21 Title 17, Code of Federal Regulations, Section 240.10b-5.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 SENTENCING ENHANCEMENT ALLEGATIONS

2 With respect to both counts in this Information:

3 The net gain exceeds \$120,000 but does not exceed \$200,000, and is comprised of the
4 following sources and amounts:

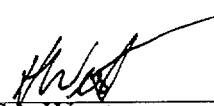
5 Count One (SangStat) \$78,123.44

6 Count Two (Applied Molecular) \$119,135.18

7 TOTAL: \$197,258.62

8
9 DATED: 12/10/04

for 
KEVIN V. RYAN
United States Attorney

10
11
12 (Approved as to form: )
 AUSA West